

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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CINDY GAMRAT,

Case No. 1:16-cv-1094

Plaintiff,

Hon. Phillip J. Green

v.

JOSHUA CLINE, JOSEPH GAMRAT,  
and DAVID HERR,

Defendants.

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**Brief in Support of Plaintiff's Motion to Voluntarily Dismiss Defendant Joseph Gamrat  
with Prejudice Under Rule 41(a)(2)**

Plaintiff and Defendant Joseph Gamrat reached a resolution of her case against him, and Plaintiff now seeks an order from this Court voluntarily dismissing Defendant Gamrat from this case with prejudice. Under Fed. R. Civ. P. 41(a)(1), Plaintiff attempted to effect the dismissal by preparing and circulating to all parties remaining in the case a stipulation to dismiss Defendant Gamrat with prejudice. Defendant Gamrat and Defendant David Horr agreed to the stipulation. However, Defendant Cline has not agreed, despite several attempts by the undersigned to procure his agreement.

Because she was unable to get all remaining defendants to agree to stipulate to dismiss Defendant Gamrat, Plaintiff is filing this motion and seeking an order from this Court under Fed. R. Civ. P. 41(a)(2) dismissing Defendant Gamrat with prejudice. Whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court. *Banque de Depots v. National Bank of Detroit*, 491 F.2d 753, 757 (6th Cir. 1974). The primary purpose of the rule in interposing the requirement of court approval is to protect the nonmovant from unfair treatment. *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). There is no reason not to grant this motion in this case, as Plaintiff and Defendant Gamrat have worked diligently through counsel to reach a resolution of her claims; Defendant Gamrat would suffer no unfair treatment or prejudice from the dismissal, as the parties actually agreed to the terms of the dismissal; no counterclaim has ever been filed; and Defendant Cline has not conducted any discovery to date related to this case. Plaintiff is asking this Court to exercise its judgment and enter an order dismissing Defendant Gamrat from this case with prejudice, as agreed upon between him and Plaintiff.

For the reasons set forth above, Plaintiff respectfully requests that this Court grant her Motion to Dismiss Defendant Gamrat from this case under Rule 41(a)(2) with prejudice.

Respectfully Submitted,

SCHENK, BONCHER & RYPMA

Dated: October 3, 2018

By: /s/ Tyler E. Osburn  
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